



PUBLIC NOTICE

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CLOSED AUCTION OF LICENSES FOR CELLULAR UNSERVED SERVICE AREAS SCHEDULED FOR DECEMBER 4, 2002

COMMENT SOUGHT ON RESERVE PRICES OR MINIMUM OPENING BIDS AND OTHER AUCTION PROCEDURES

Report No. AUC-02-47-A (Auction No. 47)

By this Public Notice, the Wireless Telecommunications Bureau (“Bureau”) announces an auction of four licenses to provide cellular service in four unserved areas (“Auction No. 47”) scheduled to commence on December 4, 2002.

All spectrum to be auctioned is the subject of pending mutually exclusive long-form applications for unserved area licenses in the Cellular Radiotelephone Service. Participation in Auction No. 47 will be limited to those applicants identified in Attachment A. Licenses will be auctioned for each of the four mutually exclusive applicant groups (“MX Groups”) identified in Attachment A. The winning bidder for a particular MX Group will be licensed to serve only the unserved area(s) proposed in its long-form application(s) for that MX Group.

The Balanced Budget Act of 1997 requires the Commission to “ensure that, in the scheduling of any competitive bidding under this subsection, an adequate period is allowed . . . before issuance of bidding rules, to permit notice and comment on proposed auction procedures”¹ Consistent with the provisions of the Balanced Budget Act and to ensure that potential bidders have adequate time to familiarize themselves with the specific rules that will govern the day-to-day conduct of an auction, the Commission directed the Bureau, under its existing delegated authority,² to seek comment on a variety of auction-specific procedures prior to the start of each auction.³ We therefore seek comment on the following issues relating to Auction No. 47.

¹ See 47 USC § 309(j) (as amended by Section 3002(a)(E)(i), Balanced Budget Act of 1997, Pub. L. 105-33, 111 Stat. 251 (1997) (“Balanced Budget Act”).

² See Amendment of Part 1 of the Commission’s Rules — Competitive Bidding Proceeding, WT Docket No. 97-82, Order, Memorandum Opinion and Order, and Notice of Proposed Rule Making, 12 FCC Rcd 5686, 5697-98, ¶ 16 (1997) (“Part 1 Order”) (“We also clarify that pursuant to Section 0.131 of our rules, the Chief, Wireless Telecommunications Bureau, has delegated authority to implement all of the Commission’s rules pertaining to auctions procedures.”).

³ See Amendment of Part 1 of the Commission’s Rules — Competitive Bidding Procedures, Allocation of Spectrum

I. Auction Structure

A. Single-Round Sealed-Bid Auction Design

We propose to award the licenses included in Auction No. 47 in a single-round sealed-bid auction. As described further below, this methodology offers every license for bid at the same time with bidders placing one bid per license.

We propose to use the single-round format because the informational advantages of a simultaneous multiple-round auction are not necessary here. Because a bidder's demand for an unserved area is based on the already-licensed area adjacent to it, not on any of the other unserved areas, there are no synergies among the licenses being offered. Accordingly, bidders do not need the information afforded by a simultaneous multiple-round auction to consider valuations, alternative business plans or backup strategies.

We seek comment on this proposal.

B. Upfront Payments and Maximum Eligibility

The Bureau has delegated authority and discretion to determine an appropriate upfront payment for each cellular unserved license being auctioned, taking into account such factors as efficiency of the auction, and the value of similar spectrum.⁴ As described further below, the upfront payment is a refundable deposit made by each bidder to establish eligibility to bid on licenses. Upfront payments related to the specific spectrum subject to auction protect against frivolous or insincere bidding and provide the Commission with a source of funds from which to collect payments owed at the close of the auction.⁵ For Auction No. 47, we propose to set the upfront payments at \$500 per license. Accordingly, we list all licenses, and the proposed upfront payment for each, in Attachment A. We seek comment on this proposal.

We further propose that the amount of the upfront payment submitted by a bidder will determine the number of bidding units on which a bidder may place bids. This limit is a bidder's "maximum initial eligibility." Each license is assigned a specific number of bidding units equal to the upfront payment listed in Attachment A, on a bidding unit per dollar basis. This number does not reflect the maximum bid that can be placed on each license. Rather, a bidder may place bids on any combination of licenses as long as the total number of bidding units associated with those licenses does not exceed its maximum initial eligibility. Thus, in calculating its upfront payment amount, an applicant must determine the maximum number of bidding units it may wish to bid on (or hold high bids on), and submit an upfront payment covering that number of bidding units. We seek comment on this proposal.

Below 5 GHz Transferred from Federal Government Use, 4660-4685 MHz, WT Docket No. 97-82, ET Docket No. 94-32, *Third Report and Order and Second Further Notice of Proposed Rule Making*, 13 FCC Rcd 374, 448, ¶ 124 (1998) ("*Part 1 Third Report and Order*"). The Commission directed the Bureau to seek comment on specific mechanisms related to the conduct of the auction including, for example, the structure of the bidding round, establishment of minimum opening bids or reserve prices, minimum accepted bids, initial maximum eligibility for each bidder, information regarding stopping rules, and information relating to auction delay, suspension or cancellation. *Id.* at ¶ 125.

⁴ *Part 1 Order*, 12 FCC Rcd at 5697-98, ¶ 16; *see Part 1 Third Report and Order*, 13 FCC Rcd at 425, ¶ 86.

⁵ Implementation of Section 309(j) of the Communications Act - Competitive Bidding, PP Docket No. 93-253, *Second Report and Order*, 9 FCC Rcd 2348, 2378-79, ¶¶ 171-176 (1994).

C. Information Relating to Auction Delay, or Cancellation

For Auction No. 47, we propose that, by public notice or by announcement during the auction, the Bureau may delay, or cancel the auction in the event of natural disaster, technical obstacle, evidence of an auction security breach, unlawful bidding activity, administrative or weather necessity, or for any other reason that affects the fair and efficient conduct of competitive bidding.⁶ In such cases, the Bureau, in its sole discretion, may elect to resume the auction or cancel the auction in its entirety. We emphasize that exercise of this authority is solely within the discretion of the Bureau. We seek comment on this proposal.

II. Bidding Procedures

A. Round Structure

The Commission will conduct Auction No. 47 over the Internet. Telephonic Bidding will also be available. As a contingency, the FCC Wide Area Network will be available as well. Details on each of these ways to place bids, including the telephone number through which the backup FCC Wide Area Network may be accessed and full information regarding how to establish such a connection, and related charges, will be announced in a later public notice announcing details of auction procedures. The start and finish time of the bidding round will also be announced in that public notice.

The single-round sealed-bid format will consist of one bidding round followed by the release of auction results. In the event of tied bids for a license or licenses, the Commission will use the Auction Bidding Announcement system to announce an additional round of bidding for the license or licenses that received tied bids. We seek comment on this proposal.

B. Reserve Price or Minimum Opening Bid

The Balanced Budget Act calls upon the Commission to prescribe methods for establishing a reasonable reserve price or a minimum opening bid when FCC licenses are subject to auction, unless the Commission determines that a reserve price or minimum bid is not in the public interest.⁷ Consistent with this mandate, the Commission has directed the Bureau to seek comment on the use of a minimum opening bid and/or reserve price prior to the start of each auction.⁸

Normally, a reserve price is an absolute minimum price below which an item will not be sold in a given auction. Reserve prices can be either published or unpublished. A minimum opening bid, on the other hand, is the minimum bid price set at the beginning of the auction below which **no bids** are accepted. It is generally used to accelerate the competitive bidding process. Also, the auctioneer often has the discretion to lower the minimum opening bid amount later in the auction. It is also possible for the minimum opening bid and the reserve price to be the same amount.

In light of the Balanced Budget Act's requirements, the Bureau proposes to establish minimum opening bids for Auction No. 47. We propose to set the minimum opening bid at \$500 per license. Accordingly, we list all licenses, including the proposed upfront payment and minimum opening bid for each, in Attachment A.

⁶ See 47 C.F.R. § 1.2104(i).

⁷ See 47 U.S.C. § 309(j) (as amended by Balanced Budget Act, Section 3002(a)). The Commission's authority to establish a reserve price or minimum opening bid is set forth in 47 C.F.R. § 1.2104(c) and (d).

⁸ *Part I Third Report and Order*, 13 FCC Rcd at 454-455, ¶ 141.

C. Minimum Acceptable Bids

Eligible bidders will be able to place bids in any whole dollar amount equal to or greater than the minimum opening bid for each license.⁹ We seek comment on this proposal.

D. Winning Bids and Tied Bids

At the end of the bidding round, the winning bids will be determined based on the highest gross bid amount received for each license. In the event of identical bids on a license (*i.e.*, tied bids), we propose to allow an additional bidding round for bidders to submit higher bids for only the license(s) with tied bids. The Commission would announce the schedule for the subsequent round, via an announcement in the Auctions Bidding System, concurrent with the release of round results. In the event of tied bids, we propose to use the Lecuyer pseudo-random number generator to select a high bid from among the tied bids. The remaining bidder, as well as the high bidder, will be able to submit a higher bid in the next round. If neither bidder submits a higher bid, the high bid from the previous round will win the license. If any bids are received in the next round, the winning bid will be determined on the highest gross bid amount received for each license. We seek comment on this proposal.

E. Information Regarding Bid Withdrawal and Bid Removal

For Auction No. 47, we propose the following bid removal and bid withdrawal procedures. Before the close of a bidding period, a bidder has the option of removing any bid placed in that round. By using the remove selected bids function in the bidding system, a bidder may effectively “unsubmit” any bid placed within that round. Once a round closes, a bidder may no longer remove a bid.

In the *Part 1 Third Report and Order*, the Commission explained that allowing bid withdrawals facilitates efficient aggregation of licenses and the pursuit of efficient backup strategies as information becomes available during the course of an auction. The Commission noted, however, that, in some instances, bidders may seek to withdraw bids for improper reasons. The Bureau, therefore, has discretion, in managing the auction, to limit the number of withdrawals to prevent any bidding abuses. The Commission stated that the Bureau should assertively exercise its discretion, consider limiting the number of rounds in which bidders may withdraw bids, and prevent bidders from bidding on a particular market if the Bureau finds that a bidder is abusing the Commission’s bid withdrawal procedures.¹⁰

With the use of the single-round sealed-bid auction structure, bidders would not have any opportunity to withdraw standing high bids from previous rounds. A possible exception could occur in the event of tied bids for a license. In that event, however, bid withdrawals would not serve to facilitate aggregation of licenses and efficient backup strategies because bidders would only be able to submit bids for the license(s) that had received tied bids. Thus, we propose not to allow any bid withdrawals in Auction No. 47. We seek comment on this proposal.

III. Conclusion

Comments are due on or before September 27, 2002, and reply comments are due on or before October 4, 2002. Because of the disruption of regular mail and other deliveries in Washington, DC, the Bureau requires that all comments and reply comments be filed electronically. Comments and reply comments must be sent by electronic mail to the following address: auktion47@fcc.gov.¹¹ The electronic mail

⁹ Bidders must have sufficient eligibility to place a bid on a license. *See* Section I.B., *supra*.

¹⁰ *Part 1 Third Report and Order*, 13 FCC Rcd at 460, ¶ 150.

¹¹ Comments and reply comments in response to this Public Notice may not be filed using the Commission’s

containing the comments or reply comments must include a subject or caption referring to Auction No. 47 Comments. The Bureau requests that parties format any attachments to electronic mail as Adobe® Acrobat® (pdf) or Microsoft® Word documents. Copies of comments and reply comments will be available for public inspection during regular business hours in the FCC Public Reference Room, Room CY-A257, 445 12th Street, SW, Washington, DC 20554.

In addition, the Bureau requests that commenters fax a courtesy copy of their comments and reply comments to the attention of Kathryn Garland at (717) 338-2850.

This proceeding has been designated as a “permit-but-disclose” proceeding in accordance with the Commission’s *ex parte* rules.¹² Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentations must contain summaries of the substance of the presentations and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented is generally required.¹³ Other rules pertaining to oral and written *ex parte* presentations in permit-but-disclose proceedings are set forth in Section 1.1206(b) of the Commission’s rules.¹⁴

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For further information concerning this proceeding, contact the Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, as listed below:

For legal questions: Kenneth Burnley at (202) 418-0660

For general auction questions: Lisa Stover at (717) 338-2888
Jeff Crooks at (202) 418-0660

For service rule questions: Jay O’Connor or Mike Kleeb at (202) 418-0620

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Electronic Comment Filing System, which is used for the Commission’s docketed rule making proceedings.

¹² 47 C.F.R. §§ 1.1200(a), 1.1206.

¹³ See 47 C.F.R. § 1.1206(b).

¹⁴ *Id.*